

As Reported by the Senate Judiciary Committee

125th General Assembly

Regular Session

2003-2004

Sub. H. B. No. 252

**Representatives Cates, Aslanides, D. Evans, Faber, Flowers, Gilb, Hagan,
Hughes, Latta, Martin, McGregor, Schaffer, Schmidt, Webster, Willamowski**

A B I L L

To amend section 309.05 of the Revised Code to 1
regulate when motions for judgment on the 2
pleadings, motions to dismiss, and motions for 3
summary judgment may be filed in actions to remove 4
a prosecuting attorney. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 309.05 of the Revised Code be amended 6
to read as follows: 7

Sec. 309.05. On complaint, in writing, signed by one or more 8
taxpayers, containing distinct charges and specifications of 9
wanton and willful neglect of duty or gross misconduct in office 10
by the prosecuting attorney, supported by affidavit and filed in 11
the court of common pleas, the court shall assign the complaint 12
for hearing and shall cause reasonable notice of ~~such~~ the hearing 13
to be given to the prosecuting attorney of the time fixed by the 14
court for the hearing. At the time so fixed, or to which the court 15
adjourns the hearing, ~~such~~ the court shall hear the evidence 16
adduced by the complainants and the prosecuting attorney. The 17
court may consider motions for judgment on the pleadings made 18
pursuant to Civil Rule 12, motions to dismiss made pursuant to 19

Civil Rule 41, and motions for summary judgment made pursuant to 20
Civil Rule 56 that are filed before the hearing. If it appears 21
that the prosecuting attorney has willfully and wantonly neglected 22
to perform ~~his~~ the prosecuting attorney's duties, or has been 23
guilty of gross misconduct in office, the court shall remove ~~him~~ 24
the prosecuting attorney from office and declare ~~such~~ the office 25
vacant. Otherwise the complaint shall be dismissed, and the court 26
shall render judgment against the losing party for costs. 27

If a complaint to remove a prosecuting attorney is dismissed 28
because the complainant or complainants failed to file an 29
affidavit in support of the complaint, the dismissal shall be 30
without prejudice. 31

Section 2. That existing section 309.05 of the Revised Code 32
is hereby repealed. 33